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FILED
APR 13 1957
JOHN T. FEY, Clerk

In The
Supreme Court of the United States

No. 800

A. P. VAN METER ET AL.,
Appellants,
VERSUS
JACK D. ABRAHAM, ET AL.,
Appelles.

APPELLANTS' BRIEF OPPOSING MOTIONS TO DISMISS

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APRIL, 1957.

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In The
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No. 800

A. P. VAN METER; ROBBERSON STEEL COMPANY, a Corporation; CAPITOL STEEL & IRON COMPANY, a Corporation; ASSOCIATED INDUSTRIES OF OKLAHOMA; and AERO DESIGN & ENGINEERING CO., a Corporation,

Appellants,

VERSUS

JACK D. ABRAHAM, ET AL.,

Appelles.

APPELLANTS' BRIEF OPPOSING MOTIONS TO DISMISS

In compliance with Rule 16 the appellants submit herewith their brief in opposition to the Motions to Dismiss filed by appellees.

The argument contained in the motion of the appellees Oklahoma Employment Security Commission *et al.* is that the appeal should be dismissed because (according to appellees) the Supreme Court of Oklahoma has interpreted the Oklahoma Employment Security Act in such

a manner as to preclude appellants from raising the Federal constitutional question urged by appellants.

Appellees' contentions are based upon the assumption that the Supreme Court of Oklahoma held in its decision in this case that an employer-contributor to the Oklahoma Unemployment Compensation Fund has no property or litigable interest therein. The Federal District Court so interpreted the Oklahoma Supreme Court's opinion, in *Aero Design & Engineering Co.* v. *Oklahoma Employment Security Commission et al.*, the companion case on appeal to this Court, No. 801.

Both the appellees and the Federal District Court have erred in interpreting the impact of the Oklahoma Supreme Court decision.

In determining just what the Oklahoma Supreme Court undertook to decide in this case, reference must be made to the syllabus by the court, for in Oklahoma it is the syllabus by the court which states the law of the case. This is demonstrated by the holding of *Corbin* v. *Wilkinson*, 175 Okl. 247, 52 P. 2d 45, that:

> "The law adopted by the court is declared in the syllabus prepared by the court. 1921 O. S. § 551. The reasoning of the court *in the body of the decision* is an aid to the correct interpretation of the law as announced in the syllabus."

Appellees have quoted at length from a California decision cited by the Oklahoma court. However the portion of the California opinion quoted by appellees is not con-

tained *in the body* of the Oklahoma decision, and hence cannot be employed to interpret the syllabus. Actually, the syllabus is perfectly clear in meaning and does not need interpretation.

The dignity of a syllabus by the Supreme Court of Oklahoma was described by that court in *City of Altus* v. *Martin*, 268 P. 2d 228, 234, wherein the court said:

> "Defendant says that the above syllabus was not necessary to the decision of the court in that case and that it was mere dictum. Be that as it may, it was adopted by this court, has not been overruled, and is a part of the law of this state."

Having noted the significance in Oklahoma of the syllabus by the court, it is pertinent to refer to the syllabus by the court in the present case, wherein the court held:

> "The provision of the Oklahoma Employment Security Act [Tit. 40 O. S. 1951 § 216(e)] for payment of unemployment insurance benefits where the decision for such payment by an appeal tribunal of the Oklahoma Employment Security Commission is 'affirmed in any amount' by said Commission's Board of Review is not unconstitutional as in violation of Art. VII, Sec. 10, of the Oklahoma Constitution, or as denying 'due process' to the last employer of the claimants of such benefits, and other employer-contributors to the unemployment compensation fund, in violation of Art. II, Sec. 7 of said Constitution and the 14th Amendment of the U. S. Constitution."

In the foregoing syllabus the court dealt with nothing except the fundamental constitutional question of

whether or not the double affirmation clause in the Oklahoma Employment Security Act contravenes due process of law. *The court did not hold (as appellees urge) that employer-contributors to the Oklahoma Unemployment Compensation Fund are without right to sue to protect that Fund or that they have no interest therein.* Thus this case is distinguishable from *Gange Lumber Co.* v. *Rowley*, 326 U. S. 295, 90 L. Ed. 85, wherein the state court had specifically held that the litigants had no interest in the fund in question.

The very fact that the Oklahoma court decided the constitutional question is in itself an admission of appellants' right to raise the question, for in *Bennett* v. *State*, 147 Okl. 14, 294 P. 149, the court held in the syllabus:

> "This court will not pass upon the constitutionality of an act of the Legislature until there is presented a proper case in which it is made to appear that the person complaining by reason thereof has been, or is about to be, deprived of some right or privilege to which he was lawfully entitled, or has been, or is about to be, subjected to some of its burdens and penalties."

If employers in Oklahoma were without right to sue to protect the Oklahoma Unemployment Compensation Fund from unlawful violation then it would have been appropriate in the present case for the Supreme Court of Oklahoma to have disposed of the case upon that basis. However in its opinion it did not even hint

that such rule pertains in Oklahoma. The court considered and decided the constitutional question presented by the litigants, thereby recognizing the litigants' standing to raise the constitutional question.

The case having been thus decided upon constitutional grounds, including the applicability of the due process of law clause of the 14th Amendment, and the court having upheld the statute against appellants' contentions that the statute violates the 14th Amendment, an appeal from that decision is proper under 28 U. S. C. § 1257 (2).

Respectfully submitted,

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